

Todd M. Friedman (SBN 216752)  
Adrian R. Bacon (SBN 280332)  
Meghan E. George (SBN 274525)  
Thomas E. Wheeler (SBN 308789)  
LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
21550 Oxnard St., Suite 780  
Woodland Hills, CA 91367  
Phone: 323-306-4234  
Fax: 866-633-0228  
tfriedman@toddflaw.com  
abacon@toddflaw.com  
mgeorge@toddflaw.com  
twheeler@toddflaw.com  
*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ABANTE ROOTER AND PLUMBING) Case No.  
INC, individually and on behalf of all )  
others similarly situated, ) **CLASS ACTION**  
Plaintiff, )  
vs. )  
DIRECT WEB MARKETING ) **COMPLAINT FOR VIOLATIONS**  
GROUP, LLC; and DOES 1 through ) **OF:**  
10, inclusive, )  
Defendant. )  
 ) 1. NEGLIGENT VIOLATIONS  
 ) OF THE TELEPHONE  
 ) CONSUMER PROTECTION  
 ) ACT [47 U.S.C. §227(b)]  
 ) 2. WILLFUL VIOLATIONS  
 ) OF THE TELEPHONE  
 ) CONSUMER PROTECTION  
 ) ACT [47 U.S.C. §227(b)]  
 ) 3. NEGLIGENT VIOLATIONS  
 ) OF THE TELEPHONE  
 ) CONSUMER PROTECTION  
 ) ACT [47 U.S.C. §227(c)]  
 ) 4. WILLFUL VIOLATIONS  
 ) OF THE TELEPHONE  
 ) CONSUMER PROTECTION  
 ) ACT [47 U.S.C. §227(c)]  
 )  
 ) **DEMAND FOR JURY TRIAL**  
 )

## CLASS ACTION COMPLAINT

1 Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),  
2 individually and on behalf of all others similarly situated, alleges the following  
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others  
6 similarly situated seeking damages and any other available legal or equitable  
7 remedies resulting from the illegal actions of DIRECT WEB MARKETING  
8 GROUP, LLC (“Defendant”), in negligently, knowingly, and/or willfully  
9 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone  
10 Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and related  
11 regulations, specifically the National Do-Not-Call provisions, thereby invading  
12 Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,  
15 a California corporation with its principle place of business also in California, seeks  
16 relief on behalf of a Class, which will result in at least one class member belonging  
17 to a different state than that of Defendant, an Arizona company. Plaintiff also seeks  
18 up to \$1,500.00 in damages for each call in violation of the TCPA, which, when  
19 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00  
20 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and  
21 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are  
22 present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Northern  
24 District of California pursuant to *28 U.S.C. § 1391(b)(2)* because Defendant does  
25 business within the State of California and Plaintiff resides within the County of  
26 Alameda.

27 **PARTIES**

28 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),

is a roofing and plumbing business in Emeryville, California and is a “person” as defined by *47 U.S.C. § 153 (39)*.

5. Defendant, DIRECT WEB MARKETING GROUP, LLC (“Defendant”), is an entity in the marketing industry, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting; as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

## **FACTUAL ALLEGATIONS**

8. Beginning in or around May of 2016 and continuing through October of 2018, Defendant contacted Plaintiff on Plaintiff's telephone numbers ending in -3803, -1080, -7210, and -0106 in an attempt to solicit Plaintiff to purchase Defendant's services.

9. Defendant used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to solicit its services.

10. Defendant contacted or attempted to contact Plaintiff from telephone numbers belonging to Defendant, including without limitation (510) 455-5876,

1 (213) 298-3782, (925) 350-7610, (925) 891-9006.

2       11. Defendant's calls constituted calls that were not for emergency  
3 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

4       12. Defendant's calls were placed to telephone number assigned to a  
5 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to  
6 *47 U.S.C. § 227(b)(1)*.

7       13. During all relevant times, Defendant did not possess Plaintiff's "prior  
8 express consent" to receive calls using an automatic telephone dialing system or an  
9 artificial or prerecorded voice on its telephones pursuant to *47 U.S.C. §*  
10 *227(b)(1)(A)*.

11       14. Furthermore, Plaintiff's telephone numbers ending in -3803, -1080, -  
12 7510, and -0106 have been on the National Do-Not-Call Registry well over thirty  
13 (30) days prior to Defendant's initial calls.

14       15. Defendant placed multiple calls soliciting its business to Plaintiff on  
15 its telephones beginning in or around May of 2016 and continued until in or around  
16 October of 2018.

17       16. Such calls constitute solicitation calls pursuant to *47 C.F.R. §*  
18 *64.1200(c)(2)* as they were attempts to promote or sell Defendant's services.

19       17. Plaintiff received numerous solicitation calls from Defendant within a  
20 12-month period.

21       18. Plaintiff is not a customer of Defendant's services and has never  
22 provided any personal information, including his telephone number, to Defendant  
23 for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's  
24 "prior express consent" to receive calls using an automatic telephone dialing  
25 system or an artificial or prerecorded voice on his telephone pursuant to *47 U.S.C.*  
26 *§ 227(b)(1)(A)*.

27       19. Despite this, Defendant continued to call Plaintiff in an attempt to  
28 solicit its services and in violation of the National Do-Not-Call provisions of the

TCPA.

20. Upon information and belief, based on Plaintiff's experiences, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

## **CLASS ALLEGATIONS**

21. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

22. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant's products or services, within any twelve-month period, within four years prior to the filing of the complaint.

23. Plaintiff represents, and is a member of, The ATDS Class, consisting of all persons within the United States who received any solicitation telephone calls

1 from Defendant to said person's telephone made through the use of any automatic  
2 telephone dialing system or an artificial or prerecorded voice and such person had  
3 not previously not provided their telephone number to Defendant within the four  
4 years prior to the filing of this Complaint.

5       24. Plaintiff represents, and is a member of, The DNC Class, consisting  
6 of all persons within the United States registered on the National Do-Not-Call  
7 Registry for at least 30 days, who had not granted Defendant prior express consent  
8 nor had a prior established business relationship, who received more than one call  
9 made by or on behalf of Defendant that promoted Defendant's products or services,  
10 within any twelve-month period, within four years prior to the filing of the  
11 complaint.

12       25. Defendant, their employees and agents are excluded from The  
13 Classes. Plaintiff does not know the number of members in The Classes, but  
14 believes the Classes members number in the thousands, if not more. Thus, this  
15 matter should be certified as a Class Action to assist in the expeditious litigation of  
16 the matter.

17       26. The Classes are so numerous that the individual joinder of all of its  
18 members is impractical. While the exact number and identities of The Classes  
19 members are unknown to Plaintiff at this time and can only be ascertained through  
20 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
21 The Classes includes thousands of members. Plaintiff alleges that The Classes  
22 members may be ascertained by the records maintained by Defendant.

23       27. Plaintiff and members of The ATDS Class were harmed by the acts of  
24 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
25 and ATDS Class members via their telephones thereby causing Plaintiff and ATDS  
26 Class members to incur certain charges for which Plaintiff and ATDS Class  
27 members had previously paid by having to retrieve or administer messages left by  
28 Defendant during those illegal calls, and invading the privacy of said Plaintiff and

## ATDS Class members.

28. Common questions of fact and law exist as to all members of The ATDS Class which predominate over any questions affecting only individual members of The ATDS Class. These common legal and factual questions, which do not vary between ATDS Class members, and which may be determined without reference to the individual circumstances of any ATDS Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a ATDS Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a telephone service;
- b. Whether Plaintiff and the ATDS Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

29. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The ATDS Class.

30. Plaintiff and members of The DNC Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class members were damaged thereby.

1       31. Common questions of fact and law exist as to all members of The  
2 DNC Class which predominate over any questions affecting only individual  
3 members of The DNC Class. These common legal and factual questions, which do  
4 not vary between DNC Class members, and which may be determined without  
5 reference to the individual circumstances of any DNC Class members, include, but  
6 are not limited to, the following:

7           a. Whether, within the four years prior to the filing of this  
8           Complaint, Defendant or its agents placed more than one  
9           solicitation call to the members of the DNC Class whose  
10           telephone numbers were on the National Do-Not-Call Registry  
11           and who had not granted prior express consent to Defendant and  
12           did not have an established business relationship with  
13           Defendant;

14           b. Whether Defendant obtained prior express written consent to  
15           place solicitation calls to Plaintiff or the DNC Class members'  
16           telephones;

17           c. Whether Plaintiff and the DNC Class members were damaged  
18           thereby, and the extent of damages for such violation; and

19           d. Whether Defendant and their agents should be enjoined from  
20           engaging in such conduct in the future.

21       32. As a person that received numerous solicitation calls from Defendant  
22 within a 12-month period, who had not granted Defendant prior express consent  
23 and did not have an established business relationship with Defendant, Plaintiff is  
24 asserting claims that are typical of the DNC Class.

25       33. Plaintiff will fairly and adequately protect the interests of the members  
26 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
27 class actions.

28       34. A class action is superior to other available methods of fair and

1 efficient adjudication of this controversy, since individual litigation of the claims  
2 of all Classes members is impracticable. Even if every Classes member could  
3 afford individual litigation, the court system could not. It would be unduly  
4 burdensome to the courts in which individual litigation of numerous issues would  
5 proceed. Individualized litigation would also present the potential for varying,  
6 inconsistent, or contradictory judgments and would magnify the delay and expense  
7 to all parties and to the court system resulting from multiple trials of the same  
8 complex factual issues. By contrast, the conduct of this action as a class action  
9 presents fewer management difficulties, conserves the resources of the parties and  
10 of the court system, and protects the rights of each Classes member.

11        35. The prosecution of separate actions by individual Classes members  
12 would create a risk of adjudications with respect to them that would, as a practical  
13 matter, be dispositive of the interests of the other Classes members not parties to  
14 such adjudications or that would substantially impair or impede the ability of such  
15 non-party Class members to protect their interests.

16       36. Defendant have acted or refused to act in respects generally applicable  
17 to The Classes, thereby making appropriate final and injunctive relief with regard  
18 to the members of the Classes as a whole.

## **FIRST CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b).**

## On Behalf of the ATDS Class

23       37. Plaintiff repeats and incorporates by reference into this cause of action  
24 the allegations set forth above at Paragraphs 1-36.

25       38. The foregoing acts and omissions of Defendant constitute numerous  
26 and multiple negligent violations of the TCPA, including but not limited to each  
27 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular  
28 *47 U.S.C. § 227 (b)(1)(A)*.

39. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

40. Plaintiff and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **SECOND CAUSE OF ACTION**

## **Knowing and/or Willful Violations of the Telephone Consumer Protection**

## Act

47 U.S.C. §227(b)

## On Behalf of the ATDS Class

41. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-40.

42. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

43. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

44. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

### **THIRD CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227(c)

## On Behalf of the DNC Class

45. Plaintiff repeats and incorporates by reference into this cause of action

1 the allegations set forth above at Paragraphs 1-44.

2 46. The foregoing acts and omissions of Defendant constitute numerous  
3 and multiple negligent violations of the TCPA, including but not limited to each  
4 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular  
5 *47 U.S.C. § 227 (c)(5)*.

6 47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,  
7 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory  
8 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

9 48. Plaintiff and the DNC Class members are also entitled to and seek  
10 injunctive relief prohibiting such conduct in the future.

11 **FOURTH CAUSE OF ACTION**

12 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

13 **Act**

14 **47 U.S.C. §227 et seq.**

15 **On Behalf of the DNC Class**

16 49. Plaintiff repeats and incorporates by reference into this cause of action  
17 the allegations set forth above at Paragraphs 1-48.

18 50. The foregoing acts and omissions of Defendant constitute numerous  
19 and multiple knowing and/or willful violations of the TCPA, including but not  
20 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,  
21 in particular *47 U.S.C. § 227 (c)(5)*.

22 51. As a result of Defendant's knowing and/or willful violations of *47*  
23 *U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of  
24 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
25 *§ 227(c)(5)*.

26 52. Plaintiff and the DNC Class members are also entitled to and seek  
27 injunctive relief prohibiting such conduct in the future.

## **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

## **FIRST CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

## **SECOND CAUSE OF ACTION**

## **Knowing and/or Willful Violations of the Telephone Consumer Protection**

## Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

### **THIRD CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant's negligent violations of *47 U.S.C. §227(c)(5)*, Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(c)(5)*.
- Any and all other relief that the Court deems just and proper.

## **FOURTH CAUSE OF ACTION**

# **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

## **JURY DEMAND**

53. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 21st Day of January, 2020.

## LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff